

REMARKS

In the Office Action mailed from the United States Patent and Trademark Office on December 30, 2004 the Examiner rejected claims 11-15, 21-24, and 26-30. Applicant respectfully traverses.

Rejections under 35 U.S.C. 112

a. 112 first paragraph

The Examiner rejected claims 11 and 24 under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. In particular, the Examiner states that the negative limitation of “free from etching and laser exposure and pressure” is new matter not contained in the original disclosure. The mere fact that a limitation is not included verbatim in the specification does not necessarily mean it is not taught in the original disclosure. The negative limitation merely specifies a characteristic of some of the embodiments taught or discussed in the original specification. As cited by the Examiner, the Specification includes on page 7, line 21, “the image may be provided onto an organic product in a variety of manners, for example, the images may be printed, painted, sprayed, copied, transferred, etched, embossed, engraved, scratched, stamped, cut, imprinted, scored, carved, or otherwise market into at least a portion of an organic product”. This list is not inconsistent with the negative limitation as indicated by the Examiner. For example, painting an image is inherently free from etching and laser exposure and pressure. Even though the words “free from etching and laser exposure and pressure” are not expressly included in the specification, the concept of providing an image on an organic product free from laser exposure is inherently taught. Likewise, other methods taught or contemplated by the claimed invention are “free from etching and laser exposure and pressure”.

b. 112 second paragraph

The Examiner rejected claims 11 and 24 under 35 U.S.C. 112, first paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The Examiner indicates that the limitation of “free from etching and laser exposure and pressure” is unclear. The phrase “free from” is analogous to “without having undergone”. Therefore, “free from etching and laser exposure and pressure” is analogous to “without having undergone etching and laser exposure and pressure”. Therefore, the group of flowers, in claims 11 and 24, have not undergone “laser exposure”, “etching”, or “pressure”.

Rejections under 35 U.S.C. 103

An invention is unpatentable under Section 103(a) “if the differences between the subject matter sought to be patented over the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which the subject matter pertains.” To establish a *prima facie* case of obviousness, three criteria must be met.

First there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the references or combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant’s disclosure. *In re Vaeck*, 947 F.2d 488 (Fed. Cir. 1991); M.P.E.P. § 2142.

In the Office Action mailed from the United States Patent and Trademark Office on December 30, 2004 the Examiner rejected claims 11-15, 21-24, and 26-30 under 35 U.S.C. 103(a), as being unpatentable over Jones or Skonecki.

a. Jones

Jones necessarily utilizes a laser to create an image. See Abstract, Figures, Summary, etc. Claims 11 and 24 specifically include the limitation of “a group of flowers, wherein each of the group of flowers is free from ... laser exposure”. In addition, the process taught by Jones is not “pad-printed” but rather burned or impregnated onto the surface. The Examiner indicates that since Jones is concerned with preserving the ability to photosynthesize and respire, that it would have been obvious to one skilled in the art to produce a pad printed image. The process taught in Jones cannot be modified to produce a “pad-printed image” or a “flower that is free from laser exposure”. A laser dependent process inherently must produce a product that is **exposed to a laser** and that includes a **burned or impregnated image**. As discussed above, an obviousness rejection must include a motivation to combine, a reasonable expectation of success and must teach all of the claim limitations. It is impossible to modify Jones in the manners suggested by the Examiner and therefore the rejection is improper. Therefore, the Applicant requests that the rejection of claims 11 and 24 with respect to Jones be withdrawn.

b. Skonecki

Skonecki teaches inscribing a message on a flower with an applicator. Abstract and Summary. Claims 11 and 24 specifically include the limitation of “repeatable, identical, pad-printed image”. Skonecki teaches specifically using an applicator to **sequentially create** an image which is

not repeatable. The Examiner further indicates that using a pad or stamp to provide identical images on materials would have been obvious to one skilled in the art. The process taught in Skonecki cannot be modified to utilize a pad or stamp because it expressly utilizes an “applicator”. In other words, Skonecki teaches away from using a pad or stamp. The product produced by the process taught in Skonecki necessarily is **not repeatable** and is **sequentially created**. In addition, the Examiner indicates that merely automating a manual process utilizes routine skill. The limitation of a “repeatable … image” is not merely an automation of the process taught in Skonecki but a specific characteristic relating to the image. As discussed above, an obviousness rejection must include a motivation to combine, a reasonable expectation of success and must teach all of the claim limitations. It is impossible to modify Skonecki in the manner suggested by the Examiner and therefore the rejection is improper. Therefore, the Applicant requests that the rejection of claims 11 and 24 with respect to Skonecki be withdrawn.

c. Dependent Claims

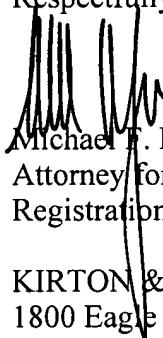
Claims 12-15, 21-23, and 26-30 are dependent from claim 11 or 24 and are therefore allowable for at least the same reasons.

CONCLUSION

Applicants submit that the amendments made herein do not add new matter and that the claims are now in condition for allowance. Accordingly, Applicants request favorable reconsideration. If the Examiner has any questions or concerns regarding this communication, or if the Examiner would like to suggest amended claim language, the Examiner is invited to call the undersigned.

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Respectfully submitted,


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